

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 07/05/2012
POSITION: Oppose
SPONSOR: California State Controller

BILL NUMBER: AB 2638
AUTHOR: Eng, Mike

BILL SUMMARY: Tax Expenditure Report

This bill would require the Department of Finance (Finance), the Franchise Tax Board (FTB), and the Board of Equalization (BOE) to report additional tax expenditure information, as specified.

FISCAL SUMMARY

This bill in itself would not directly affect revenues.

This bill could result in non-trivial, though potentially absorbable, operating costs for Finance. This bill's impacts on the FTB's and BOE's operating costs are expected to be minor.

SUMMARY OF CHANGES

Amendments to this bill since our analysis of the April 17, 2012 version include the following amendments which do not change our position:

- The FTB and BOE would be required to submit by December 1 (i.e., instead of January 10 in the April 17, 2012 version) of each year a report to Finance and the Legislature on the tax and fiscal effect of tax expenditures from sales, and use tax, personal income tax, and corporation tax.
- Other minor changes in the contents of the tax expenditures reports to be submitted by the FTB and BOE to Finance and the Legislature.

COMMENTS

Finance is opposed to this bill for the following reasons:

- In Executive Order B-14-11, the Administration notes that substantial efforts and costs are expended in preparing, tracking, and filing reports required by the Legislature, and that it is committed to identifying and eliminating administrative inefficiencies and reducing costs.
- Current state law already requires Finance to report to the Legislature detailed tax expenditure information every year.
- The FTB and BOE have been publishing their respective tax expenditure reports on a regular basis, even though these reports are not required under state law.
- This bill could require Finance to divert staffing resources from preparing the Governor's Budget to meet the new reporting requirements, and could result in increased operating costs for Finance.
- This bill would result in minor additional operating costs for the BOE, assuming the BOE would report only additional information which is currently available from tax returns, and for all other tax expenditures the BOE would estimate the revenue losses using independent sources.

Analyst/Principal P. Ng	Date	Program Budget Manager Kristin Shelton	Date
Department Deputy Director		Date	
Governor's Office:	By:	Date:	Position Approved _____ Position Disapproved _____
BILL ANALYSIS			Form DF-43 (Rev 03/95 Buff)

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ANALYSIS

1. Programmatic Analysis

Under state law, the Department of Finance (Finance) has been required to provide a tax expenditure report to the Legislature since 1971. Chapter 1762, Statutes of 1971, required that a biennial report be submitted to the Legislature. Chapter 268, Statutes of 1984, increased the reporting frequency from once every two years to once a year. The current state law (i.e., Chapter 49, Statutes of 2006) requires the report be provided to the Legislature by September 15 of each year and include each of the following:

- A comprehensive list of tax expenditures exceeding \$5 million.
- The statutory authority for each provision.
- A description of the legislative intent of each tax expenditure, if specified in the enacting legislation.
- The sunset date of each provision.
- The beneficiaries of the provision.
- An estimate of the state and local revenue loss for the current and two subsequent fiscal years.
- For personal income tax expenditures, the number of taxpayers and returns affected for the most recent tax year.
- For corporation and sales tax expenditures, the number of returns or businesses affected for the most recent year for which data is available.
- A listing of any comparable federal benefit.
- A description of any tax expenditure evaluation or compilation of information completed by any state agency since the last tax expenditure report by Finance.

Chapter 49, Statutes of 2006 defines the tax expenditure as "a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state."

Current state law also requires the Governor to submit to the Legislature within the first 10 days of each calendar year, a budget for the ensuing fiscal year.

Department of Finance

This bill would require Finance to include the following additional information in the annual tax expenditure report:

- The year of enactment for those tax expenditures exceeding \$5 million in annual cost.
- If available, anticipated revenue loss based on the final fiscal committee analysis of the act which established the tax expenditure, adjusted for inflation.

This bill would also require Finance to include in the annual Governor's Budget an estimate of the revenue loss for each tax expenditure exceeding \$5 million in the upcoming fiscal year.

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ANALYSIS (continued)**Franchise Tax Board**

This bill would require the FTB to submit a report to Finance and the Legislature by December 1 of each calendar year on the tax and fiscal effect of personal income tax expenditures and corporation income and franchise tax expenditures that exceed \$5 million dollars in the current and the two subsequent fiscal years. The report would be prepared using the most recent tax year for which full year data is available, the current state fiscal year, and the budget year, in the following categories:

- By the adjusted gross income of the claimants.
- By the tax liability of the taxpayer.
- By region.
- By industry code.

For the most recent tax year for which full year data is available, this bill would also require the FTB's report to include the following information:

- The average, median, highest, and lowest amounts claimed by taxpayer bracket.
- The amounts claimed and as of the time the report is prepared, amounts disallowed.
- The usage data, where available, for the same or similar tax expenditures adopted by other states with similar economies, business entity types, and tax laws, or the federal government.
- Any distinguishing tax characteristic, including other tax expenditures claimed.

This bill would also require the FTB to provide sufficient data to support a subsequent analysis of the revenue loss of the tax expenditure.

Board of Equalization

This bill would require the BOE to submit by December 1 of each year a report to Finance and the Legislature on the tax and fiscal effect the revenue loss for sales and use tax that exceed \$5 million dollars as specified. To the extent allowed under federal law, the report would include the most recent data to characterize the economic, tax, and demographic profile of claimants, including, but not limited to, the following:

- An estimate for the state and local revenue loss for the current fiscal year and the two subsequent fiscal years including partial tax exemptions and all other tax expenditures when the BOE has obtained that information.
- If available, estimated revenue loss based on the final fiscal committee analysis of the act which established the tax expenditure, adjusted for inflation.
- For the most recent fiscal year for which a full year of data is available, average, median, highest, and lowest amounts claimed, by taxpayer total gross sales, amounts claimed and as of the time the report is prepared, amounts disallowed.

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ANALYSIS (continued)

- Usage data, where available, for the same or similar tax expenditures adopted by other states with similar economics, business entity types, and tax laws.
- Any other distinguishing tax characteristics, including, but not limited to, other tax expenditures claimed.

This bill would also require the BOE to provide sufficient data to support a subsequent analysis of the revenue loss of the tax expenditure.

2. Fiscal Analysis

This bill in itself would not directly affect revenues.

This bill could result in non-trivial, though potentially absorbable, one-time and ongoing operating costs for Finance. The requirement that Finance's tax expenditure report include additional information on the anticipated revenue loss of a tax expenditure that was in the last fiscal committee analysis of the bill that enacted the expenditure, adjusted for inflation, would likely result in a non-trivial one-time cost for the initial data gathering as well as a smaller ongoing cost for maintaining and updating this data. The requirement to include the tax expenditure estimates information in the Finance's annual budget documents could also result in non-trivial one-time and ongoing costs. The one-time costs are likely related to the additional work required to change the formatting on the presentation of the material. Ongoing costs are likely associated with adding a new work load during a time period when departmental staff are fully occupied with the current budget production process.

The FTB's analysis indicates that the costs to the FTB to implement this bill are expected to be minor and could be accomplished with existing resources.

The BOE's draft analysis estimates that additional BOE's costs associated with this bill would be minor and absorbable--assuming the BOE would report only additional information which is currently available from returns, and for all other tax expenditures the BOE would estimate the revenue losses using independent sources.

	SO	(Fiscal Impact by Fiscal Year)							
Code/Department	LA	(Dollars in Thousands)							
Agency or Revenue	CO	PROP					Fund		
Type	RV	98	FC	2012-2013	FC	2013-2014	FC	2014-2015	Code
1147/Pers Inc Tax	RV	Yes		----	No/Minor Fiscal Impact	----			0001
1104/Corp Tax	RV	Yes		----	No/Minor Fiscal Impact	----			0001
1149/Sale Use Tax	RV	Yes		----	No/Minor Fiscal Impact	----			0001
8860/Finance	SO	No		----	See Fiscal Analysis	----			0001
0860/Equalization	SO	No		----	See Fiscal Analysis	----			0001
1730/FTB	SO	No		----	See Fiscal Analysis	----			0001